

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REYNOLDS METALS COMPANY and
ALCOA, INC.,

Plaintiffs,

NATIONAL UNION FIRE INSURANCE
COMPANY,

Plaintiff-in

Intervention,

v.

ALCAN INC. And ALCAN ALUMINUM
CORPORATION,

Defendants.

Case No. C04-0175RJB

ORDER GRANTING
PLAINTIFFS' MOTION
FOR PREJUDGMENT
INTEREST

This matter comes before the court on Plaintiffs' ("Reynolds") Motion for Prejudgment Interest (Dkt. 366) and on Joinder of National Union Fire Insurance Company of Pittsburgh, Pennsylvania in Plaintiffs' Motion for Prejudgment Interest (Dkt. 378) . The court has considered the relevant documents, the remainder of the file herein and the events of trial .

PROCEDURAL HISTORY

On May 22, 2006, the jury in this civil case returned a verdict for plaintiffs and against both Alcan Inc. and Alcan Aluminum Corporation ("Alcan") for \$59,640,819, which represents \$57,215,351 for settlement amounts paid to boatbuilders and boat owners, and \$1,425,468 paid to Glosten Associates, Inc. ("Glosten") for fees and expenses related to investigation and the settlements.

1 On May 25, 2006, Reynolds Metals Company and Alcoa Inc. filed this motion for prejudgment
2 interest, requesting that the court order prejudgment interest totaling \$16,098,686, from the date each
3 payment was made by plaintiffs to boat builders and boat owners and Glosten through May 23, 2006, the
4 date on which the court entered judgment in favor of plaintiffs. Dkt. 366. On June 9, 2006, plaintiff in
5 intervention National Union Fire Insurance Company filed a joinder in the motion for prejudgment
6 interest. Dkt. 378.

7 The Positions of the Parties

8 Reynolds requests prejudgment interest of \$16,098,686, contending that (1) Washington law
9 applies; (2) prejudgment interest is favored under Washington law because it promotes justice; (3)
10 prejudgment interest is recoverable when the claim is liquidated; (4) each settlement paid by Reynolds to a
11 boat builder or owner on a specific date was a liquidated sum certain; (5) Glosten's fees were liquidated
12 from the dates Reynolds made payments to Glosten through the date of judgment; (6) Alcan did not
13 challenge the amount of any payment or the date the payment was made; and (7) the applicable rate for
14 prejudgment interest in Washington is 12 percent. Dkt. 366.

15 Alcan opposes an award of prejudgment interest, contending that (1) the claim was not liquidated
16 because the principal amount awarded was arrived at based upon the jury's determination of
17 reasonableness; (2) what Alcan did or did not challenge has no bearing on the issue of whether the amount
18 Reynolds claimed as damages was liquidated or unliquidated; (3) the instructions permitted the jury to
19 award damages that varied from the amounts Reynolds had paid in settlement to the boat builders and
20 owners and/or to Glosten; (4) Alcan did challenge the amount of the payments because it argued at trial
21 that Reynolds had paid out more than what had been reasonable for damages-mitigation purposes, in light
22 of contractual limitations Reynolds could and should have chosen to enforce against Reynolds' customers
23 based on terms and conditions in Reynolds' standard Acknowledgment and Sales Order forms; and (5)
24 even if Alcan had stipulated that all amounts paid to settle the third party claims had been reasonable, such
25 settlement amounts are not thereby converted to liquidated amounts under Washington law. Dkt. 368.

26 In reply, Reynolds argues that (1) Washington law recognizes that claim settlements and repair
27 costs are liquidated amounts; and (2) Reynolds' claim for a specific, readily quantifiable amount controls
28

1 whether a claim is liquidated, not whether Alcan raised a defense based upon Reynolds' contracts with its
2 customers. Dkt. 373.

3 DISCUSSION

4 In a diversity case, state law (here, Washington law) governs an award of prejudgment interest.
5 *Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707, 713 (9th Cir. 1992). Prejudgment interest is favored
6 under Washington law in appropriate cases. *First National Bank v. Washington Insurance Guarantee*
7 *Association*, 94 Wn.App. 744, 759 (1999).

8 Prejudgment interest is recoverable (1) when an amount claimed is liquidated or (2) when the
9 amount of an unliquidated claim is for an amount due upon a specific contract for the payment of money
10 and the amount due is determinable by computation with reference to a fixed standard contained in the
11 contract, without reliance on opinion or discretion. *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32
12 (1968). Only the first prong of the rule applies here.

13 A liquidated claim is one where the amount of the claim is determinable by a fixed standard,
14 without reliance on opinion or discretion. *Douglas Northwest, Inc. V. Bill O'Brien and Sons*
15 *Construction, Inc.*, 64 Wn.App. 661, 690 (1992); *Stryk v. Panell*, 66 Wn.App. 566, 571 (1992). A
16 liquidated claim has further been defined as a claim where the evidence furnishes data which, if believed,
17 makes it possible to compute the amount with exactness, without reliance on opinion or discretion. *Prier*
18 *v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32 (1968). An unliquidated claim is one where the exact
19 amount of the sum to be allowed cannot be definitely fixed from the facts proved, whether disputed or
20 undisputed, but must "in the last analysis depend upon the opinion or discretion of the judge or jury as to
21 whether a larger or a smaller amount should be allowed." *Id.* at 33.

22 Prejudgment interest is calculated from the date that data is provided which makes possible the
23 computation of the damages with exactness, and without reliance on opinion or discretion, to the date of
24 the judgment. *See Id.* at 35. The prejudgment interest rate applicable to this case under Washington law is
25 12 percent per annum. *See* RCW 19.52.020(1).

26 The parties do not dispute that prejudgment interest should be awarded under Washington law, at a
27 rate of 12 percent per annum, for damages that were liquidated. The only issue before the court is
28

1 whether the damages awarded by the jury were for amounts that were liquidated. Reynolds argues that the
2 claims were liquidated; Alcan contends that the claims were unliquidated.

3 The evidence included payments of \$57,215, 351 Reynolds made to boat owners and boat builders,
4 and the dates of each payment. *See* Exh. 323. Evidence also included \$2,425,468 in fees and expenses
5 Reynolds paid to Glosten, and the date Glosten billed Reynolds for those fees and expenses. *See* Exh. 322.
6 On May 10, 2006, Richard Strong of Glosten testified regarding Exhibits 323 and 322, which he prepared.
7 Mr. Strong testified that during the investigation and settlement process, Alcan participated in the “boat
8 solutions team” and received investigatory information and settlement recommendations, and did not
9 object to any settlement, settlement amount, or to payments made to Glosten.

10 The amount plaintiffs request for prejudgment interest is based upon amounts calculated from the
11 date of each payment made to the boat owners and boat builders, and to Glosten, until judgment was
12 entered on May 23, 2006. Alcan does not contest the amounts as calculated; Alcan’s objection is that the
13 damages requested and awarded were unliquidated.

14 Plaintiffs’ claim for damages was, from the beginning, based on the amounts plaintiffs paid to boat
15 builders and owners, and on the costs of investigation and settlement paid on account of defendants’
16 alleged legal fault. *See* Complaint, (Dkt. 1), ¶¶ 61, 64, 65, 69, 78, 80, 84, 89, 99 & 105. The “Relief
17 Requested” paragraph (Complaint ¶ 17, line 23, et seq) only requested the jurisdictional amount (“in excess
18 of \$75,000.00”), but it is clear from a reading of the whole Complaint that what the plaintiffs were
19 requesting was exactly what the jury ultimately awarded.

20 Similarly, the agreed Pretrial Order (Dkt. 307) made clear that the amounts requested as damages
21 were fixed and set sums based on amounts paid out in settlement with boat owners and boat builders, and
22 Glosten’s fees. (*See* Agreed Pretrial Order, Dkt. 307, page 5, ¶16.)

23 A dispute over the claim in whole or in part does not change the character of a liquidated claim to
24 unliquidated. Hansen v. Rothaus, 107 Wash.2d 468, 472 (1986). The claim here was clearly based on
25 amounts determinable by a fixed standard, where the evidence furnished data which, if believed, made it
26 possible to compute damages with exactness, without reliance on opinion or discretion.

1 Defendant argues, however, that the Court's Jury Instruction (Dkt. 361, No. 20), which required
2 findings of reasonableness, trumped what otherwise might be liquidated damages. An examination of the
3 law does not support defendants' position.

4 First, the basic rule is that a liquidated claim is one where the amount is *determinable* by a fixed
5 standard without reliance on opinion or discretion. *Douglas Northwest Inc. v. Bill O'Brien and Sons*
6 *Construction, Inc.*, 64 Wash. App. 661, 828 P.2d 565 (1992) & *Styrk v. Cornerstone Investments, Inc.*, 61
7 Wash. App. 462, 810 P.2d 1366 (1991). A required determination that an amount is reasonable does not
8 mean that the *amount* fixed cannot be determined by a fixed standard without reliance on an opinion or
9 discretion. The rule states that the amount must be *determinable*. Instruction No. 20 required some
10 determination by the jury; this does not eliminate the liquidated nature of the claims. Indeed, that is
11 apparently what the jury did here - they relied on Exhibits 322 and 323 and the testimony supporting those
12 exhibits, adopting plaintiffs' fixed standards.

13 Second, the basic rule as restated in *Prier v. Refrigeration Engineering Co.*, 74 Wash.2d at 32,
14 requires the same conclusion: There was evidence that furnished data which, *if believed*, made it possible
15 to compute the amount with exactness. Apparently, the jury believed plaintiffs' evidence of
16 reasonableness, and therefore fixed damages with exactness.

17 Third, the case law supports plaintiffs' position - for example, note the following language from
18 these cases: "Our rule in *Prier* is clearly applicable where, as here the damage amount was established, or
19 *could be* ascertained with certainty based upon the facts before the court." *Weyerhaeuser v. Commercial*
20 *Union Insurance*, 142 Wash.2d 654, 686 (2000) (emphasis added). "A claim is considered liquidated if 'it
21 amount is readily determinable and it is possible to determine the exact amount without reliance on
22 opinion. . . . A dispute over the claim does not change the character of the claim from liquidated to
23 unliquidated. . . . The amount expended to clean up the contamination was a sum certain." *Pederson's*
24 *Fryer Farms v. Transamerica Insurance Co.*, 83 Wash.App. 432, 452 (1996) (internal citations omitted).
25 "A claim becomes liquidated if its amount is readily determinable and it is possible to determine the exact
26 amount without reliance on opinion or discretion." *Public Utility District No. 1 of Klickitat County v.*
27 *International Insurance Company*, 142 Wash.2d 789, 810 (1994).

1 Fourth, it now appears to be nearly axiomatic that “settlements in underlying civil actions are
2 liquidated amounts.” *Commonwealth Land Title Insurance Company v. Hart*, 2004 WL 1559773 (2004).
3 We find a settlement made in an underlying civil action represents a liquidated amount and an award of
4 prejudgment interest is appropriate.” ” *Public Utility District No. 1 of Klickitat County*, 142 Wash.2d at
5 811. While it could be argued that insurance cases, like *Public Utility District No. 1 of Klickitat County*
6 should be treated differently, or that settlements and claims that have not ripened into lawsuits (“civil
7 actions”) as in *Public Utility District* and *Commonwealth*, should be treated differently, this court can see
8 no reason that claims for reimbursement outside of the insurance context, or claims for reimbursement for
9 settlements paid before claims became “civil actions” should be treated differently that the claims in *Public*
10 *Utility District* and *Commonwealth*. See also *King County v. Puget Sound Power and Light Company*, 70
11 Wash. App. 58 (1993).

12 What Alcan did or did not challenge at trial has no bearing on the question of whether damages are
13 liquidated.

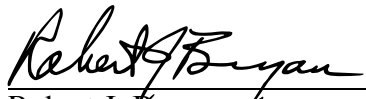
14 In this case, damages based on the amounts of the settlements Reynolds paid to their boat owner
15 and boat builder customers, and the amounts paid to Glosten, were liquidated amounts. Prejudgment
16 interest should be awarded to Reynolds. The amount claimed by plaintiffs of \$16,098,686 is supported by
17 plaintiffs’ showing.

18 Therefore, it is hereby

19 **ORDERED** that Plaintiffs Reynolds Metals Company and Alcoa Inc.’s Motion for Prejudgment
20 Interest (Dkt. 366) and Joinder of National Union Fire Insurance Company of Pittsburgh, Pennsylvania in
21 Plaintiffs’ Motion for Prejudgment Interest (Dkt. 378) are **GRANTED**. Reynolds Metals Company and
22 Alcoa Inc. are hereby granted an additional judgment of \$16,098,686.00 for prejudgment interest against
23 Alcan Inc. and Alcan Aluminum Corporation.

24 The Clerk is directed enter judgment accordingly and to send uncertified copies of this Order to all
25 counsel of record.

26 DATED this 29th day of June, 2006.

27 
28 Robert J. Bryan
United States District Judge